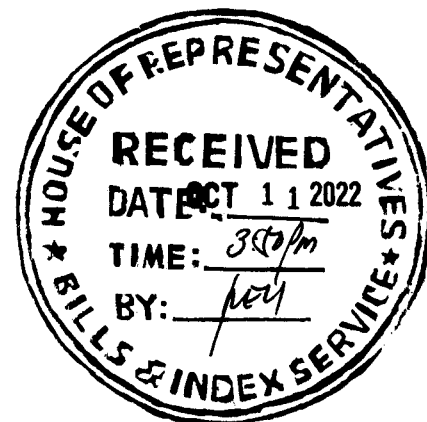


Republic of the Philippines
House of Representatives
Quezon City

Nineteenth Congress
First Regular Session



HOUSE BILL NO. 5532

Introduced by Representative **JOEY SARTE SALCEDA**

AN ACT
AMENDING SECTION 144 OF REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS
“THE NATIONAL INTERNAL REVENUE CODE OF 1997”, AS AMENDED

EXPLANATORY NOTE

The harms of vaping and the need to compensate the people for its adverse impacts on health are already well established in both scientific literature and global jurisprudence. On September 2022, the global vape brand Juul agreed to settle with several states in the US over its marketing practices specifically targeted at the youth. The settlement totaled to USD 438.5 million, making it one of the largest financial settlements for harmful marketing practices ever made in the world.

In February 2020, the Centers for Disease Control and Prevention (CDC) confirmed 2,807 cases of e-cigarette or vaping use-associated lung injury (EVALI) and 68 deaths attributed to that condition. The outbreak put into serious question the claims of vaping companies that vaping is harm reduction against conventional tobacco products. That it markets specifically to young people who have never even smoked in their lives puts even more doubt on this claim.

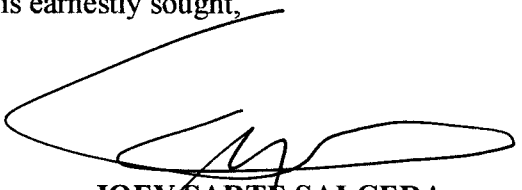
Research from The Johns Hopkins University on vape ingredients published in October 2021 showed that there are thousands of chemical ingredients in vape products, most of which are not yet identified. Among those the team could identify were several potentially harmful substances, including caffeine, three chemicals never previously found in e-cigarettes, a pesticide and two flavorings linked with possible toxic effects and respiratory irritation. This range of harmful chemicals could be even more harmful than conventional tobacco itself.

This representation asserts that the State should not be in the business of choosing between harmful substances, promoting one over the other through lower taxation. Anything that causes harm, especially something as potentially harmful as vaping should not be promoted.

While prohibition of dangerous substances has proven to generally fail as a policy, especially as regards promoting public health, regulation, along with taxation appears to result in better outcomes. In fact, Philippine excise tax laws have been lauded by the World Health Organization as a best practice in promoting public health.

This representation seeks to internalize the social and health costs of vaping through higher taxes. This measure will increase rates by an average of 14% for products with already existing excise taxes, while imposing a 20% ad valorem plus P20 specific tax on vaping devices. The measure is expected to raise revenues by P2.34 billion annually.

In view of the foregoing, the approval of this measure is earnestly sought,



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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 144 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 144. Tobacco Products, Heated Tobacco Products, [and] Vapor Products AND ELECTRONIC NICOTINE OR NON-NICOTINE DELIVERY DEVICES - There shall be collected an excise tax [of One peso and seventy-five centavos (P1.75) effective on **January 1, 2013** on each kilogram of] ON the following products of tobacco:

xxx

xxx

xxx

(B) Heated Tobacco Products. - There shall be levied, assessed and collected on heated tobacco products an excise tax at the rate prescribed below:

Effective on January 1, 2020, Twenty-five pesos (P25.00) per pack of twenty (20) units or packaging combinations of not more than twenty (20) units;

Effective on January 1, 2021, Twenty-seven pesos and fifty centavos (P27.50) per pack of twenty (20) units or packaging combinations of not more than twenty (20) units;

Effective on January 1, 2022, Thirty pesos (P30.00) per pack of twenty (20) units or packaging combinations of not more than twenty (20) units; and

Effective on January 1, 2023, [Thirty-two pesos and fifty centavos (P32.50)] **FORTY PESOS** per pack of twenty (20) units or packaging combinations of not more than twenty (20) units.

The rates of tax imposed under this Subsection, shall be increased by five percent (5%) every year effective on January 1, 2024 through revenue regulations issued by the Secretary of Finance.

Heated tobacco products shall only be packed in twenties and other packaging combinations of not more than twenty (20) units.

No heated tobacco products manufactured in the Philippines and produced for export shall be removed from their place of manufacture or exported without posting of an export bond equivalent to the amount of the excise tax due thereon if sold domestically: Provided, however, That heated tobacco products for export may be transferred from the place of manufacture to a bonded facility, upon posting of a transfer bond, prior to export.

Heated tobacco products imported into the Philippines and destined for foreign countries shall not be allowed entry without posting a bond equivalent to the amount of customs duty, excise and value-added taxes due thereon if sold domestically.

Manufacturers, distributors, and importers of heated tobacco products shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales and removals for each particular brand of heated tobacco products sold for the three-month period immediately preceding.

Any manufacturer, distributor, or importer who, in violation of this Section, misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon final findings by the Commissioner that the violation was committed, be penalized by a summary cancellation or withdrawal of his/her or its permit to engage in business as manufacturer, distributor, or importer of heated tobacco products.

Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he/she shall be deported immediately after serving the sentence, without further proceedings for deportation.

The Food and Drug Administration (FDA) shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of heated tobacco products, including banning the sale to nonsmokers or persons below twenty-one (21) years old.

Selling heated tobacco products to persons below twenty-one (21) years old shall be prohibited, and shall be punished with a fine of Ten thousand pesos (P10,000.00) and imprisonment of thirty (30) days.

Unit packets and any outside wrapping of heated tobacco products and other similar products shall carry a health warning compliant with Republic Act No. 10643, otherwise known as 'The Graphic Health Warnings Law'.

Manufacturers, distributors, importers, and sellers of heated tobacco products are given a period of eighteen (18) months from the effectivity of the implementing rules and regulations (IRR) of this Act to comply with the requirements under such IRR.

Eighteen (18) months after the effectivity of this Act, no person or legal entity shall sell or commercially distribute or display any heated tobacco product without ensuring that the labels and packages, as well as any other container used in displaying the said products meet the requirements under this Act.

Any violation of the foregoing provisions on health warnings shall be punishable with the same penalties provided for in Republic Act No. 10643, otherwise known as 'The Graphic Health Warnings Law'.

The Bureau of Internal Revenue is mandated to issue a revenue regulation prescribing the floor price or the minimum price of heated tobacco product taking into account the sum of the excise and value-added taxes as provided herein.

(C) Vapor Products. [36] - There shall be levied, assessed and collected on vapor products an excise tax at the rates prescribed below:

(1) Nicotine Salt or Salt Nicotine. - There shall be levied, assessed and collected on any liquid substance, regardless of nicotine content, including nicotine-free liquids or any similar product, further classified as nicotine salt or salt nicotine, an excise tax based on the following schedules:

Effective on January 1, 2020, Thirty-seven pesos (P37.00) per milliliter or a fraction thereof;

Effective on January 1, 2021, Forty-two pesos (P42.00) per milliliter or a fraction thereof;

Effective on January 1, 2022, Forty-seven pesos (P47.00) per milliliter or a fraction thereof; and

Effective on January 1, 2023, [Fifty-two pesos (P52.00)] **SIXTY PESOS (P60.00)** per milliliter or a fraction thereof.

Provided, That the rates of tax imposed under this Subsection shall be increased by five percent (5%) every year effective on January 1, 2024, through revenue regulations issued by the Secretary of Finance.

(2) Conventional 'Freebase' or 'Classic' Nicotine. - There shall be levied, assessed and collected on any liquid substance, regardless of nicotine content, including nicotine-free liquid or any similar product, further classified as conventional 'freebase' or 'classic' nicotine an excise tax based on the following schedules:

Effective on January 1, 2020, Forty-five pesos (P45.00) per ten (10) milliliters or a fraction thereof;

Effective on January 1, 2021, Fifty pesos (P50.00) per ten (10) milliliters or a fraction thereof;

Effective on January 1, 2022, Fifty-five pesos (P55.00) per ten (10) milliliters or a fraction thereof; and

Effective on January 1, 2023, Sixty pesos (P60.00) per ten (10) milliliters or a fraction thereof.

Provided, That the rates of tax imposed under this Subsection shall be increased by five percent (5%) every year effective January 1, 2024, through revenue regulations to be issued by the Secretary of Finance.

Manufacturers, distributors, and importers of vapor products shall be required to indicate on the package the actual volume in milliliters of the liquid solutions and gels.

No vapor products manufactured in the Philippines and produced for export shall be removed from their place of manufacture or exported without posting of an export bond equivalent to the amount of the excise tax due thereon if sold domestically: Provided, however, That vapor products for export may be transferred from the place of manufacture to a bonded facility, upon posting of a transfer bond, prior to export.

Vapor products imported into the Philippines and destined for foreign countries shall not be allowed entry without posting a bond equivalent to the amount of customs duty, excise and value-added taxes due thereon if sold domestically.

Manufacturers, distributors, and importers of vapor products shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of vapor products sold for the three-month period immediately preceding.

Any manufacturer, distributor, or importer who, in violation of this Section, misdeclares or misrepresents in his/her or its sworn statement herein required any pertinent data or information shall, upon final findings by the Commissioner that the violation was committed, be penalized by a summary cancellation or withdrawal of his/her or its permit to engage in business as manufacturer, distributor, or importer of vapor products.

Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he/she shall be deported immediately after serving the sentence, without further proceedings for deportation.

The FDA shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of vapor products, including banning the sale to nonsmokers or persons below twenty-one (21) years old, and banning of flavorings.

Provided, That vapor products which exceed sixty-five milligrams of nicotine per milliliter (65mg/ml) of liquid or gel, or which does not exceed this limit but seeks to make health claims, shall be subject to additional requirements as the DOH and the FDA may impose: Provided, however, That this shall not diminish the regulatory powers of the FDA over vapor products, regardless of nicotine content.

Selling vapor products to persons below twenty-one (21) years old shall be prohibited, and shall be punished with a fine of Ten thousand pesos (P10,000.00) and imprisonment of (30) days.

The manufacture, importation, sale and distribution of vapor products with flavoring other than plain tobacco or plain menthol, shall be prohibited.

Unit packets and any outside wrapping of vapor products and other similar products shall carry a health warning compliant with Republic Act No. 10643, otherwise known as 'The Graphic Health Warnings Law'.

Manufacturers, distributors, importers, and sellers of vapor products are given a period of eighteen (18) months from the effectivity of the IRR of this Act to comply with the requirements under such IRR.

Eighteen (18) months after the effectivity of this Act, no person or legal entity shall sell or commercially distribute or display any vapor product without ensuring that the labels

and packages, as well as any other container used in displaying the said products meet the requirements under this Act.

Any violation of the foregoing provisions on health warning shall be punishable with the same penalties provided for in Republic Act No. 10643, otherwise known as 'The Graphic Health Warnings Law'.

Notwithstanding the provisions of this Act on heated tobacco products and vapor products, this Act acknowledges the need for further scientific evidence on the health impact of these products.

The Bureau of Internal Revenue is mandated to issue a revenue regulation prescribing the floor price or the minimum price of vapor products taking into account the sum of the excise tax and value-added tax as provided herein.

(D) ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY DEVICES. – THERE SHALL BE COLLECTED AN EXCISE TAX ON ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY DEVICES AN EXCISE TAX IN ACCORDANCE WITH THE FOLLOWING SCHEDULE.

(1) EFFECTIVE JANUARY 1, 2023:

(A) AN AD VALOREM TAX EQUIVALENT TO TWENTY PERCENT (20%) OF THE NET RETAIL PRICE;

(B) IN ADDITION TO THE AD VALOREM TAX HEREIN IMPOSED, A SPECIFIC TAX OF TWENTY PESOS (P20.00) PER DEVICE

(2) IN ADDITION TO THE AD VALOREM TAX HEREIN IMPOSED, THE SPECIFIC TAX RATE IMPOSED UNDER THIS SUBSECTION SHALL BE INCREASED BY FIVE PERCENT (5%) EFFECTIVE ON JANUARY 1, 2024 THROUGH REVENUE REGULATIONS ISSUED BY THE SECRETARY OF FINANCE.

***'ELECTRONIC NICOTINE AND NON-NICOTINE DELIVERY DEVICE'* SHALL MEAN ANY ELECTRONIC DEVICE THAT, THROUGH AN AEROSOLIZED SOLUTION, DELIVERS NICOTINE, FLAVOR, OR ANY OTHER SUBSTANCE TO THE USER INHALING FROM THE DEVICE; AND WHICH SHALL INCLUDE AN E-CIGARETTE; AN E-HOOKAH; AN E-CIGAR; A VAPE PEN; AN ADVANCED REFILLABLE PERSONAL VAPORIZER; AN ELECTRONIC PIPE; AND ANY COMPONENT, PART, OR ACCESSORY OF A DEVICE WITHOUT REGARD TO WHETHER THE COMPONENT, PART, OR ACCESSORY IS SOLD SEPARATELY FROM THE DEVICE.**

***'NET-RETAIL PRICE'* SHALL MEAN THE PRICE AT WHICH THE DEVICE IS SOLD ON RETAIL IN AT LEAST FIVE (5) MAJOR SUPERMARKETS IN METRO MANILA, OR IN AT LEAST TWO (2) MAJOR ONLINE SHOPPING NETWORKS, EXCLUDING THE AMOUNT INTENDED TO COVER THE APPLICABLE EXCISE TAX AND THE VALUE-ADDED TAX.**

MAJOR SUPERMARKETS, AS CONTEMPLATED UNDER THIS ACT, SHALL BE THOSE WITH THE HIGHEST ANNUAL GROSS SALES IN METRO MANILA OR THE REGION, AS THE CASE MAY BE, AS DETERMINED BY THE BIR, AND SHALL EXCLUDE RETAIL OUTLETS OR KIOSKS, CONVENIENCE OR SARI-SARI STORES, AND OTHERS OF A SIMILAR NATURE: PROVIDED, THAT NO TWO (2) SUPERMARKETS IN THE LIST TO BE SURVEYED ARE AFFILIATED AND/OR BRANCHES OF EACH OTHER: PROVIDED, FINALLY, THAT IN CASE A PARTICULAR DEVICE IS NOT SOLD IN MAJOR SUPERMARKETS, THE PRICE SURVEY CAN BE CONDUCTED IN RETAIL OUTLETS WHERE SAID DEVICE IS SOLD IN METRO MANILA, AS THE CASE MAY BE, UPON DETERMINATION OF THE COMMISSIONER OF INTERNAL REVENUE.

MAJOR ONLINE SHOPPING NETWORK, AS CONTEMPLATED UNDER THIS SECTION, SHALL BE THOSE WITH THE HIGHEST ANNUAL GROSS SALES NATIONWIDE, AS DETERMINED BY THE BIR.

THE NET RETAIL PRICE SHALL BE VALIDATED BY THE BIR THROUGH A BIENNIAL PRICE SURVEY UNDER OATH.

THE METHODOLOGY AND ALL PERTINENT DOCUMENTS USED IN THE CONDUCT OF THE LATEST PRICE SURVEY SHALL BE SUBMITTED TO THE CONGRESSIONAL OVERSIGHT COMMITTEE ON THE COMPREHENSIVE TAX REFORM PROGRAM CREATED UNDER REPUBLIC ACT NO. 8240.

NO ELECTRONIC NICOTINE OR NON-NICOTINE DELIVERY DEVICE MANUFACTURED IN THE PHILIPPINES AND PRODUCED FOR EXPORT SHALL BE REMOVED FROM THEIR PLACE OF MANUFACTURE OR EXPORTED WITHOUT POSTING OF AN EXPORT BOND EQUIVALENT TO THE AMOUNT OF THE EXCISE TAX DUE THEREON IF SOLD DOMESTICALLY.

ELECTRONIC NICOTINE OR NON-NICOTINE DELIVERY DEVICES IMPORTED INTO THE PHILIPPINES AND DESTINED FOR FOREIGN COUNTRIES SHALL NOT BE ALLOWED ENTRY WITHOUT POSTING A BOND EQUIVALENT TO THE AMOUNT OF CUSTOMS DUTY, EXCISE AND VALUE-ADDED TAXES DUE THEREON IF SOLD DOMESTICALLY.

MANUFACTURERS AND IMPORTERS OF ELECTRONIC NICOTINE OR NON-NICOTINE DELIVERY DEVICES SHALL, WITHIN THIRTY (30) DAYS FROM THE EFFECTIVITY OF THIS ACT, AND WITHIN THE FIRST FIVE (5) DAYS OF EVERY MONTH THEREAFTER, SUBMIT TO THE COMMISSIONER A SWORN STATEMENT OF THE VOLUME OF SALES FOR EACH PARTICULAR BRAND OF ELECTRONIC NICOTINE OR NON-

NICOTINE DELIVERY DEVICE SOLD FOR THE THREE-MONTH PERIOD IMMEDIATELY PRECEDING.

ANY MANUFACTURER OR IMPORTER WHO, IN VIOLATION OF THIS SECTION, MISDECLARES OR MISREPRESENTS IN HIS/HER OR ITS SWORN STATEMENT HEREIN REQUIRED ANY PERTINENT DATA OR INFORMATION SHALL, UPON FINAL FINDINGS BY THE COMMISSIONER THAT THE VIOLATION WAS COMMITTED, BE PENALIZED BY A SUMMARY CANCELLATION OR WITHDRAWAL OF HIS/HER OR ITS PERMIT TO ENGAGE IN BUSINESS AS MANUFACTURER OR IMPORTER OF ELECTRONIC NICOTINE OR NON-NICOTINE DELIVERY DEVICES.

ANY CORPORATION, ASSOCIATION OR PARTNERSHIP LIABLE FOR ANY OF THE ACTS OR OMISSIONS IN VIOLATION OF THIS SECTION SHALL BE FINED TREBLE THE AMOUNT OF DEFICIENCY TAXES, SURCHARGES AND INTEREST WHICH MAY BE ASSESSED PURSUANT TO THIS SECTION.

ANY PERSON LIABLE FOR ANY OF THE ACTS OR OMISSIONS PROHIBITED UNDER THIS SECTION SHALL BE CRIMINALLY LIABLE AND PENALIZED UNDER SECTION 254 OF THIS CODE. ANY PERSON WHO WILLFULLY AIDS OR ABETS IN THE COMMISSION OF ANY SUCH ACT OR OMISSION SHALL BE CRIMINALLY LIABLE IN THE SAME MANNER AS THE PRINCIPAL.

IF THE OFFENDER IS NOT A CITIZEN OF THE PHILIPPINES, HE/SHE SHALL BE DEPORTED IMMEDIATELY AFTER SERVING THE SENTENCE, WITHOUT FURTHER PROCEEDINGS FOR DEPORTATION

SEC. 2. Separability Clause. - If any provision or part of this Act is declared invalid or unconstitutional, such declaration shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the case, whereas the parts or provisions not affected thereby shall remain in full force and effect.

SEC. 3. Implementing Rules and Regulations. - Within ninety (90) days from the effectivity of this Act, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, shall promulgate the necessary rules and regulations for its effective implementation. Failure to promulgate the rules and regulations shall not prevent the implementation of this Act upon its effectivity.

SEC. 4. Effectivity. - This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in a newspaper of general circulation.

Approved,